IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 3009 of 2005

Between:

Shahnaz Siraj, w/o Syed Sirajuddin Quadri,
R/o 11-2-227 & 228, Nampally, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad.
2 Assistant City Planner, Circle No.4, Municipal Corporation of Hyderabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of mandamus or any other appropriate writ declaring that the action of the 2nd respondent contained in Proceedings No. 34/TP/C4/MCH/2005 dated 17-2-2005 purporting to direct the petitioner to remove the structure in Premises No. 11-2-227 & 228 ,Nampally, Hyderabad, as arbitrary and illegal and direct the respondents to forbear from interfering with the residential House of the petitioner bearing No. 11-2-227 and 228, Nampally, Hyderabad and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner:MR.V.VENKATARAMANA

Counsel for the Respondents: MR.RAMA RAO GHANTA

The Court made the following :

ORAL ORDER:

The present writ petition has been filed to issue Writ of Mandamus declaring that the action of the 2nd respondent contained in Proceedings No. 34/TP/C4/MCH/2005 dated 17-2-2005 purporting to direct the petitioner to remove the structure in Premises No. 11-2-227 & 228 ,Nampally, Hyderabad, is arbitrary illegal and direct the respondents to forbear from interfering with the residential House of the petitioner bearing No. 11-2-227 and 228, Nampally, Hyderabad.

It is the case of the petitioner that she is the owner of house bearing No.11-2-227 and 228, Nampally, over an extent of 118 Sq.yds, and after obtaining necessary permission from the Municipal authorities, she has constructed residential house consisting of ground plus first floor in the year 1998 in accordance with the sanctioned plan. While so, the 2nd respondent issued notice dated 17.2.2005, alleging that the petitioner has encroached upon the common passage in front of her house towards southern side, and to remove the said illegal structures. The petitioner filed this writ petition, and got a stay order dated 18.2.2005.

In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner has not constructed the house in accordance with the sanction plan. It is their case that they had issued notice to the petitioner in this regard on 17.2.2005 to remove the said encroachment. It is further their case that the A.P. Housing Board

addressed a letter on 30.5.2005 to the respondents with a sketch plan showing the original house of the petitioner and the encroachments being made upon the common passage and requested the respondents to take further action in this regard. Lastly, it is submitted that the petitioner cannot encroach upon the common passage, which is absolute property of the Corporation.

This writ petition was admitted on 21.2.2005 and there is an interim direction restraining the respondents to demolish any part of the house of the petitioner. It is evident from the facts on record that the petitioner, in deviation of the sanctioned plan, had made constructions illegally on the common passage. Since the petitioner obtained interim order, the respondents could not take appropriate action on the illegal constructions. In that view of the matter, prima facie, as the petitioner encroached upon the common passage belonging to the Corporation by making illegal constructions, I deem it appropriate in the interests of justice to dismiss the writ petition.

The writ petition is accordingly dismissed. It is needless to mention that the interim order granted on 18.2.2005 also stands vacated. No order as to costs.

12.7.2005

CVM

To,

1 The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad.
2 Assistant City Planner, Circle No.4, Municipal Corporation of Hyderabad, Hyderabad.

3. 2 CD copies.